

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.4294 OF 2006

Date: 09-03-2006

Between:

Shah Motilal Suresh Kumar

And another ... Petitioners

And

Assistant Commercial Tax Officer-II ... Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.4294 OF 2006

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O R D E R (Per the Hon'ble Sri Bilal Nazki, J):

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Heard learned counsel for the parties.

The grievance of the petitioners is that the goods belonging to them have been detained without any authority of law. On the last occasion, the learned Government Pleader for Commercial Taxes submitted that a confiscation order has already been passed to the extent of tax and two times penalty. Today, he has produced order dated 06-03-2006, according to which, the goods have been confiscated to the extent of the value of tax and also two times penalty which come to Rs.1,08,000/-. The tax has been imposed at the rate of 10%. The learned counsel for the petitioners disputes this also and submits that the goods were not taxable and at any rate they could not be taxed at a rate more than 4%. These are questions, which will have to be gone by any other forum and not by this Court at this stage. However, the petitioners submit that since the respondent has already passed an order, if they give a bank guarantee for the amount of Rs.1,08,000/-, that will be encashed immediately and that will amount to payment of tax, although they have a right to file an appeal against the order dated 06-03-2006, which is yet to be served on them. The learned Government Pleader submits that the order has been sent to the petitioners by registered post.

In this view of the matter, we are disposing of the writ petition allowing the petitioners to file an appeal before the appellate authority against the order dated 06-03-2006. The bank guarantee for Rs.1,08,000/- (Rupees one lakh and eight thousand only) shall be given by the petitioners within a period of ten days from today. On furnishing such bank guarantee, the goods shall be released in favour of the petitioners. For a period of four weeks from today, the respondent shall not encash the bank guarantee and the bank guarantee shall remain subject to further orders from the appellate authority, if the appeal is filed. No order as to costs.

(Bilal Nazki, J)

9th March, 2006

(G.Chandraiah, J)

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